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7					
8	BEFORE THE BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS				
9					
10	STATE OF CA			•	
11	In the Matter of the Statement of Issues	Case No.	1013-88		
12	Against:				
13	MATTHEW CODY VANCLEVE	STATEMEN	NT OF ISSUE	S	
14	Registered Nurse License Application				
15	Respondent.				
16					* •
17	Complainant alleges:				
18	<u>PARTIES</u>				
19	1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in				
20	her official capacity as the Executive Officer of the Board of Registered Nursing, Department of				
21	Consumer Affairs (Board).				
22	2. On or about May 18, 2011, the Board received an application for a Registered Nurse				
23	License from Matthew Cody Van Cleve (Respondent). On or about May 16, 2011, Matthew				
24.	Cody VanCleve certified under penalty of perjury to the truthfulness of all statements, answers,				
25	and representations in the application. The Board denied the application on September 15, 2011.				
26	On or about September 19, 2011, Respondent wrote a letter to the Board, requesting a hearing to				
27	appeal the denial of his application for a registered nurse license.				
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#### **JURISDICTION**

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

#### STATUTORY PROVISIONS

- 4. Section 480 states, in pertinent part:
- "(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:
- (1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.
- (2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.
- (3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.
- (B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made . . ."
- 5. Section 2736 provides that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480.
  - 6. Section 2761 states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, . . . "

- "(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof . . ."
  - 7. Section 2762 states, in pertinent part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

. . .

- "(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous devise as defined in Section 4022, or alcohol beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.
- (c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof. . . ."

#### **REGULATORY PROVISION**

8. California Code of Regulations, title 16, section 1444 states, in pertinent part:

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:"

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"(c) Theft, dishonesty, fraud, or deceit. . . ."

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#### FIRST CAUSE FOR DENIAL OF APPLICATION

## (Convictions of Substantially Related Crimes)

- 9. Respondent's application is subject to denial under Sections 480, subdivision (a)(1), 2736, and 2761, subdivision (f), in conjunction with California Code of Regulations, title 16, section 1444, in that Respondent was convicted of crimes substantially related to the qualifications, functions or duties of a registered nurse, as follows:
- a. On or about March 11, 2009, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152(b) [drive with an equal to or greater than 0.08% blood alcohol content (BAC), to wit 0.19% BAC] in the criminal proceeding entitled *The People of the State of California v. Matthew Cody Van Cleve* (Super. Ct. Fresno County, 2008, No. M08929127). The Court sentenced Respondent to ten days jail, placed him on 36 months probation, ordered him to enroll in and complete the Adult Offender Work Program, the "Scared Stiff" class, and a 3-Month First Offender Alcohol Program, and to pay various fines and fees.
- b. The circumstances underlying the conviction are that on or about September 23, 2008, Respondent was driving a vehicle while under the influence of alcohol, and blood alcohol level test results showed his BAC was 0.22/0.22%. Law enforcement officers stopped Respondent's vehicle, because they observed that his license plate light was not on. They observed objective symptoms of intoxication and he failed preliminary alcohol screening tests which they administered to him.
- c. On or about December 2, 2003, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 20002(a) [hit and run driving: property damage] in the criminal proceeding entitled *The People of the State of California v. Matthew Cody Van Cleve* (Super. Ct. Fresno County, 2003, No. T03000622). The Court sentenced Respondent to three years probation, and ordered him to pay restitution.
- d. The circumstances underlying the conviction are that on or about February 26, 2003, Respondent, while driving his vehicle, side swiped another vehicle on the right side, and left the scene of the accident without stopping and reporting this to the owner or a law enforcement

agency, as required by law. Then, when law enforcement officers interviewed him at his address about the hit and run accident, he was dishonest, in that he initially denied that he had been driving his vehicle that night, and falsely claimed that a friend of his had been driving it.

## SECOND CAUSE FOR DENIAL OF APPLICATION

#### (Dishonest Acts)

10. Respondent's application is subject to denial under Section 480, subdivision (a)(2), in that on or about February 26, 2003, Respondent committed acts involving dishonesty, fraud, or deceit with the intent to substantially benefit herself and others, and substantially injure others when he caused a motor vehicle accident and failed to stop and provide information.

Complainant refers to and by this reference incorporates the allegations set forth above in Paragraph 9, subparagraph d, inclusive, as though set forth fully.

## THIRD CAUSE FOR DENIAL OF APPLICATION

# (Conduct Warranting License Discipline)

- 11. Respondent's application is subject to denial under Section 480, subdivision
  (a)(3)(A), in that Respondent committed acts which, if committed by a licensed registered nurse, would be grounds for suspension or revocation of the license by violating sections as follows:
- a. <u>Sections 490 and 2761, subdivision (f)</u>. On or about March 11, 2009, and December 2, 2003, Respondent sustained substantially related criminal convictions.
- b. <u>Sections 2761, subdivision (a), and 2762, subdivision (b)</u>. On or about September 23, 2008, on the grounds of unprofessional conduct, Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to himself or others.
- c. <u>Section 2761, subdivision (a), and 2762, subdivision (c)</u>. On or about March 11, 2009, on the grounds of unprofessional conduct, Respondent sustained a criminal conviction involving the self-administration of alcoholic beverages.
- d. <u>Section 2761, subdivision (a)</u>. On or about February 26, 2003, and September 23, 2008, Respondent committed acts of unprofessional conduct.

Complainant refers to and by this reference incorporates the allegations set forth above in Paragraph 10, subparagraphs a - d, inclusive, as though set forth fully.

## **PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

- 1. Denying Matthew Cody VanCleve's Registered Nurse License Application; and
- 2. Taking such other and further action as deemed necessary and proper.

DATED: August 2 2012

LOUISE R. BAILEY, M.ED., RN

Executive Officer

Board of Registered Nursing

Department of Consumer Affairs

State of California

Complainant

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